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Attorneys for Defendants

HSBC MORTGAGE CORPORATION (USA) and
 HSBC BANK USA, N.A.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

Philip Wong, Frederic Chaussy, and Leslie
 Marie Shearn, individually, on behalf of all
 others similarly situated, and on behalf of
 the general public,

Plaintiffs,

v.

HSBC Mortgage Corporation (USA);
 HSBC Bank USA, N.A.; and DOES 1
 through 50, inclusive,

Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF KENNETH CHAN IN
 OPPOSITION TO PLAINTIFFS' MOTION
 FOR CLASS CERTIFICATION UNDER
 FED. R. CIV. P. 23**

Date: October 10, 2008
 Time: 9:00 a.m.
 Courtroom: 7 (19th Floor)
 Judge: Hon. Maxine M. Chesney

I, Kenneth Chan, hereby declare and state:

1. I have personal knowledge of the facts set forth below. If called as a witness,
 I would testify to the following.

2. I have been employed by HSBC Mortgage Corporation (USA) ("HMCU") as
 a Retail Mortgage Lending Consultant since November 2007. I work in the Northern California
 Region. My manager is Amy Ku.

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1 3. My primary duty as a Retail Mortgage Lending Consultant is to sell loans.
2 HMCU does not require that I get business in any particular way; however, I am required to use my
3 own judgment in determining how to maximize my business opportunities. The only direction my
4 manager gives to me about how to obtain sales is telling me to be entrepreneurial and suggesting
5 potential sources of business, such as realtors.

6 4. In my job, I have flexible work hours. No one tells me how many hours to
7 work. I set my own schedule, and it is my decision when and how much to work. If I want to take a
8 day off or work fewer hours in any given day, I can do that.

9 5. HMCU permits me to take breaks whenever I want. I work independently and
10 determine my own schedule, so I can take breaks at the time of my choosing and of the length of my
11 choosing. I could take an entire hour for lunch if I wanted. I am free to run personal errands or
12 attend personal appointments at any time. No one at HMCU has ever told me not to take breaks or
13 otherwise discouraged or prevented me from taking breaks.

14 6. HMCU also does not require me to work in any particular location. I do not
15 have an office that I work from. Rather, I meet with clients at branches of HSBC Bank or at other
16 locations that are convenient for the client. It is up to me where I meet with clients. I have traveled
17 as far as Santa Cruz, California to meet with one of my former clients at his office. I have also met
18 with clients at Starbucks or at the client's house. Every client is different, and I try to do what will
19 make the client comfortable. I usually meet with clients in person because that helps to develop
20 trust, which makes a sale more likely; I meet with about 90% of my clients in person.

21 7. The training I received when I started working at HMCU was primarily from
22 my manager, Amy Ku. She spent a lot of time with me during the first weeks of my employment
23 and explained various procedures to me. I also attended a short one week training in Buffalo, New
24 York. In addition, my region has monthly meetings where our manager provides us with updates
25 and additional training. Sometimes these meetings are by conference call because all the lending
26 consultants travel a lot. HMCU also holds live webcasts when needed, which has been about three
27 or four times in the last year. I have also done a couple outside training sessions through the
28 California Association of Mortgage Brokers (CAMB). I went to two trainings through CAMB in

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1 San Ramon, California. One was about understanding tax returns and one was about how to sell
 2 Federal Housing Association (FHA) loans. These trainings were suggested by my manager, Amy
 3 Ku, but not required.

4 8. I work independently, and I rarely see my manager in person. I usually talk to
 5 her by phone when questions arise.

6 9. To be successful in this industry, it is important to obtain business from many
 7 sources and to be available to clients.

8 10. A major source of sales for me is referrals from satisfied customers. One of
 9 my clients referred four other people to me. I have been in the mortgage industry since 2003, so I
 10 already had a lot of clients when I began working for HMCU. I also get repeat business from
 11 satisfied clients.

12 11. I also receive a lot of business from referrals from bankers at HSBC Bank
 13 USA, N.A. My manager asked me to be the contact person to receive referrals from three branches
 14 of HSBC Bank: Milpitas, Cupertino and Warm Springs/Fremont. It is important for me to build
 15 good rapport with the bankers at these locations, so they will refer clients to me.

16 12. I also receive referrals from a few realtors, and I am working on developing
 17 relationships with additional realtors.

18 13. It is up to me what sort of networking or marketing I want to do. I
 19 occasionally take a client to lunch or dinner. I also call past clients when their loans are expiring or
 20 when interest rates drop. I do not often attend networking events because I already have a lot of
 21 clients.

22 14. It is up to me how much time I spend at the bank branches from which I
 23 receive referrals. HMCU does not require me to spend any particular amount of time at the bank
 24 branches. The bankers have my cell phone number and email address and can contact me, no matter
 25 where I am, when a bank customer asks about mortgages.

26 15. The process of selling mortgages begins with an initial meeting with the client
 27 where I work to build the client's trust. I then assess the client's financial status and mortgage
 28 needs, so that I can make recommendations as to the type and amount of mortgage that is best suited

1 to the client. Every client is different, and I must determine what their goals are. For example, some
 2 clients just want to get the lowest possible interest rate. Other clients want a fixed rate for a specific
 3 amount of time. After I determine the client's goals, I assess their income, credit and assets and tell
 4 the client whether they will meet underwriting guidelines for particular mortgages. I make
 5 recommendations to the client as to what mortgage to apply for. Nobody tells me what
 6 recommendations to make; rather, I use my own independent judgment. If the client decides to
 7 apply for a HMCU mortgage, I work with the client to complete a loan application and compile the
 8 necessary documents. The amount of time it takes me to complete the paperwork for each loan
 9 varies from one to two hours. Then, I send the paperwork to the underwriter, who approves or
 10 declines the application. After that, I meet with the client and inform the client of the result. I
 11 communicate with clients constantly during the process of closing the loan. It is very important to
 12 be available to clients or else they will take their business elsewhere.

13 16. I estimate that I spend about 30% of my time in initial client meetings and
 14 about 30% of my time processing loan applications. Then, I spend about 40% of my time working
 15 with clients to answer their questions and meet conditions so their loans can be approved.

16 17. I earn more than \$100,000 per year at HMCU. I have made \$250,000 this
 17 year as of September 1, 2008.

18 18. I am paid on a commission basis under a written incentive compensation plan.
 19 I received the compensation plan when I began working at HMCU, and the terms were explained to
 20 me. I accepted the terms in the plan. Under the plan, I receive 0.5 to 0.65% of the amount of loans I
 21 sell that are funded each month. I do not receive any incentive commission if the client decides not
 22 to go through with the mortgage; the mortgage must close for me to receive an incentive
 23 commission. Thus, part of the selling process is to ensure the client closes on the mortgage. The
 24 selling process does not end when the customer submits a loan application.

25 19. I also receive a draw at the beginning of each month. No expenses or fees are
 26 deducted from the draw except for taxes and insurance.

27 20. My incentive commissions are paid at the end of each month and determined
 28 on a monthly basis. My manager sends me a report each month showing the amount of my

1 commissions. I have an opportunity to review the amount to ensure it is accurate. There have never
 2 been any errors. When my commissions are paid, the only thing deducted is the amount of my draw.
 3 My draw was forgivable for only the first three months of my employment at HMCU.

4 21. Many of the mortgage products that I sell for HMCU have application or
 5 appraisal fees that must be paid by the customer. The amount of the fees vary based on the product,
 6 and not every loan program has a fee. HMCU's procedures require lending consultants to collect
 7 these fees from the clients. This procedure is well known. I have always collected the required fees
 8 and have never had any fees deducted from my pay.

9 22. I have received written notices about this lawsuit from the Plaintiffs' counsel
 10 at least two, if not three, times. The reason I do not join this lawsuit is because I think it is frivolous,
 11 and I believe I am properly classified as exempt. I like my compensation plan and flexible work
 12 hours the way they are. I am not afraid of losing my job if I join the lawsuit, and no one at HMCU
 13 has discouraged me from joining.

14 I declare under penalty of perjury under the laws of the State of California and the
 15 United States of America that the foregoing declaration is true and correct to the best of my personal
 16 knowledge. Executed this 17 day of September, 2008, in MILPITAS
 17 California.

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20 KENNETH CHAN
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